



September 25, 2001

Mr. Aric J. Garza
Escamilla & Poneck, Inc.
Falcon International Building
5219 McPherson, Suite 306
Laredo, Texas 78041

OR2001-4293

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 152403.

The United Independent School District (the "district"), which you represent, received a request for copies of various written communications pertaining to chiropractors serving as "team doctors," on campus or at sporting events, in connection with district athletic activities. You represent that some of the information responsive to the request was sent to the requestor. You claim, however, that the submitted exhibits B-1 through B-7, or portions thereof, are excepted from disclosure under section 552.107(1) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his or her client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Based on your representations and a careful review of the information at issue, we conclude that you have demonstrated the applicability of section 552.107(1) to exhibits B-1 and B-3 through B-7. The district may therefore withhold this information under section 552.107(1).

We conclude, however, that you have not demonstrated the applicability of section 552.107(1) to one page of exhibit B-2, a memorandum. Based on your arguments and representations and our review of this information, you have not demonstrated how this information comprises or contains either client confidences or attorney advice or opinion. We understand you to represent that this information was forwarded to an attorney for the district. However, the law of attorney-client privilege is clear that materials "acquire[] no special protection from the simple fact of being turned over to an attorney." *Colton v. United States* 306 F.2d 633, 639 (2nd Cir. 1962) *cert den'd*. Because you have not demonstrated how the memorandum in exhibit B-2 is subject to the attorney-client privilege, we conclude this information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

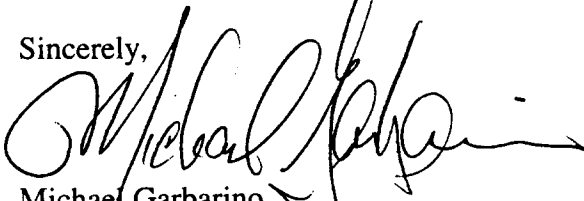
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 152403

Enc: Submitted documents

c: Mr. Roland R. Hicks
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(w/o enclosures)